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used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

Risk assessment means:

(1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

Single family property means a residential property containing one through four dwelling units.

Single room occupancy (SRO) housing means housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both (see Zero-bedroom dwelling).

Soil-lead hazard means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for soil-lead hazards in § 35.1320.

Sponsor means mortgagor (borrower).

Subrecipient means any nonprofit organization selected by the grantee or participating jurisdiction to administer all or a portion of the Federal rehabilitation assistance or other non-rehabilitation assistance, or any such organization selected by a subrecipient of the grantee or participating jurisdiction. An owner or developer receiving Federal rehabilitation assistance or other assistance for a residential property is not considered a subrecipient for the purposes of carrying out that project.

Standard treatments means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

Substrate means the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6

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years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, HUD may designate an earlier date.

Tenant means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

A *visual assessment* alone is not considered an evaluation for the purposes of this part. Visual assessment means looking for, as applicable:

(1) Deteriorated paint;

(2) Visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or

(3) The completion or failure of a hazard reduction measure.

Wet sanding or *wet scraping* means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

Window trough means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

Worksite means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

Zero-bedroom dwelling means any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings (see Single room occupancy (SRO)).

[64 FR 50202, Sept. 15, 1999, as amended at 69 FR 34271, June 21, 2004; 69 FR 40474, July 2, 2004]

§ 35.115 Exemptions.

(a) Subparts B through R of this part do not apply to the following:

(1) A residential property for which construction was completed on or after

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January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see §35.160).

(2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.

(3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of “housing for the elderly” and “expected to reside” in §35.110).

(4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with §35.1320(a) (for more information regarding inspection procedures consult the 1997 edition of Chapter 7 of the HUD Guidelines). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.

(5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with §§35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.

(6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.

(7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and non-residential uses in a mixed-use property shall not be exempt.

(8) Any rehabilitation that does not disturb a painted surface.

(9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by

a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.

(10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, §§35.210 and 35.215 shall not apply to the property.

(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

(12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.

(13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with §35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with §35.1355.

(b) For the purposes of subpart C of this part, each Federal agency other than HUD will determine whether appropriations are sufficient to implement this rule. If appropriations are not sufficient, subpart C of this part shall not apply to that Federal agency.

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If appropriations are sufficient, subpart C of this part shall apply.

§ 35.120 Options.

(a) *Standard treatments.* Where interim controls are required by this part, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Standard treatments shall then be conducted in accordance with § 35.1335 on all applicable surfaces, including soil. Standard treatments are completed only when clearance is achieved in accordance with § 35.1340.

(b) *Abatement.* Where abatement is required by this part, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Abatement shall then be conducted on all applicable surfaces, including soil, in accordance with § 35.1325, and completed when clearance is achieved in accordance with § 35.1340. This option is not available in public housing, where inspection is required.

(c) *Lead hazard screen.* Where a risk assessment is required, the designated party may choose first to conduct a lead hazard screen in accordance with § 35.1320(b). If the results of the lead hazard screen indicate the need for a full risk assessment (e.g., if the environmental measurements exceed levels established for lead hazard screens in § 35.1320(b)(2)), a complete risk assessment shall be conducted. Environmental samples collected for the lead hazard screen may be used in the risk assessment. If the results of the lead hazard screen do not indicate the need for a follow-up risk assessment, a risk assessment is not required.

(d) *Paint testing.* Where paint stabilization or interim controls of deteriorated paint surfaces are required by this rule, the designated party has the option to conduct paint testing of all surfaces with non-intact paint. If paint testing indicates the absence of lead-based paint on a specific surface, paint stabilization or interim controls are not required on that surface.

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§ 35.125 Notice of evaluation and hazard reduction activities.

The following activities shall be conducted if notice is required by subparts D and F through M of this part.

(a) *Notice of evaluation or presumption.* When evaluation is undertaken and lead-based paint or lead-based paint hazards are found to be present, or if a presumption is made that lead-based paint or lead-based paint hazards are present in accordance with the options described in § 35.120, the designated party shall provide a notice to occupants within 15 calendar days of the date when the designated party receives the report or makes the presumption. A visual assessment alone is not considered an evaluation for the purposes of this part. If only a visual assessment alone is required by this part, and no evaluation is performed, a notice of evaluation or presumption is not required.

(1) The notice of the evaluation shall include:

(i) A summary of the nature, dates, scope, and results of the evaluation;

(ii) A contact name, address and telephone number for more information, and to obtain access to the actual evaluation report; and

(iii) The date of the notice.

(2) The notice of presumption shall include:

(i) The nature and scope of the presumption;

(ii) A contact name, address and telephone number for more information; and

(iii) The date of the notice.

(b) *Notice of hazard reduction activity.* When hazard reduction activities are undertaken, each designated party shall:

(1) Provide a notice to occupants not more than 15 calendar days after the hazard reduction activities (including paint stabilization) have been completed. Notice of hazard reduction shall include, but not be limited to:

(i) A summary of the nature, dates, scope, and results (including clearance) of the hazard reduction activities;

(ii) A contact name, address, and telephone number for more information;

(iii) Available information on the location of any remaining lead-based